IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30/04/2003

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The Honourable Mr. B. SUBHASHAN REDDY, Chief Justice
and
The Honourable Mr. Justice D. MURUGESAN

W.A. No.595 of 2003
and
W.A.M.P. No.783 of 2003

1. The Secretary,
Educational Department,
Government of Tamil Nadu,
Secretariat, Chennai - 9,

2. The Director of Medical Education,
Directorate of Medical Education,
No.162, Periyar EVR High Road,
Kilpauk, Chennai - 10.

3. The Secretary,
Selection Committee,
Directorate of Medical Education,
No.162, Periyar EVR High Road,
Kilpauk, Chennai - 10. ... Appellants

-Vs-

Master J. Rajkumar (Minor)
Rep. By his father and natural guardian
D. Joseph,
Elagiri. ... Respondent

Appeal against the order of the learned single Judge dated 30.12.200 2
passed in W.P.No.36781 of 2002.

!For Appellant : Mr. V.R. Rajasekaran, Spl. G.P.
(Education)

^For Respondent : Mr. Om Prakash for M/s.Ramalingam
Associates

:J U D G M E N T

THE HON'BLE THE CHIEF JUSTICE

This Writ Appeal raises an important question of law for consideration regarding the enforceability of 3% reservation for the persons suffering with disabilities as provided in the 'The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Disabilities Act.

2. Few facts, leading to the filing of the Writ Petition No.36781 of 2002, may be necessary to be stated. The respondent is a minor represented by his father and is 50% physically disabled because of polio attack during his childhood. He appeared in Entrance Examination conducted for Medical/BDS course for the academic year 2002 - 2003 and secured 285.37 out of 300 marks but he could not get admission in Open Category and among physically disabled, he was placed at fifth rank. He could not get a seat in M.B.B.S. course as only three seats were earmarked for disabled. However, he was offered a seat in B.D.S. in payment category. Aggrieved by the said action, he had filed the writ petition.

3. The learned single Judge, by his order dated 30.12.2002, upheld the plea that the respondent/writ petitioner was entitled for a seat construing Section 39 of the Disabilities Act as mandatory, disapproved earmarking of only three seats out of the sanctioned seats of 1,255 and held that 39 seats, conforming to 3% reservation for the disabled, ought to be provided and consequently issued directions to the appellants herein to admit the writ petitioner in the M.B.B.S. course for the academic year 2002 - 2003. The argument of the appellants before the learned single Judge that the provision contained in Section 39 of the Disabilities Act is not applicable and in any event, it is only directory and not mandatory, was negatived. Hence, this Appeal.

4. Mr. V.R. Rajasekaran, learned Special Government Pleader (Education), appearing for the appellants, strenuously contended that the State had already enacted the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and Appointments or Posts in the Services under State) Act, 199 3, hereinafter referred to as T.N. Act 45 of 1994, and as such, there is no scope for implementing the Disabilities Act enacted by the Central Government and that in any event, the provision contained in Section 39 of the Disabilities Act is only directory and not mandatory, that it is not possible to give 3% reservation for disabled, that the three seats reserved for M.B.B.S. course are sufficient for them, that even those seats have been filled up for the academic year 2002 - 2003, that classes have begun long before the order of the learned single Judge and that the order of the learned single Judge is fit to be set aside.

5. Mr. Omprakash, learned counsel appearing for the respondent/ petitioner, has countered the said arguments submitting that Section 39 of the Disabilities Act is mandatory in nature, that the respondent/ writ petitioner, who had secured good marks, was entitled as of right to be admitted under the quota for disabled, that the quota for disabled should be only 3% and not three seats, that T.N. Act 45 of 1994 cannot nullify the beneficial provision provided under the Disabilities Act and that the order of the learned single

Judge has got to be affirmed.

6. Of the contentions and the rival contentions made, the following points emerge for consideration;

(i) whether the Disabilities Act enacted by the Central Government is not effective in Tamil Nadu in view of T.N. Act 45 of 1994;

(ii) whether Section 39 of the Disabilities Act is mandatory or directory; and

(iii) whether the writ petition is hit by laches and the writ petitioner is not entitled for the relief in view of the filling up of seats for the academic year 2002 - 2003.

7. The Supreme Court in INDIRA SAWHNEY v. UNION OF INDIA (AIR 1993 SC 477) held that reservations contemplated in Clause 4 of Article 14 of the Constitution should not exceed 50% excepting in certain extraordinary situations where relaxation may become imperative but cautioned that while doing so, a special case should be made out like the population inhabiting far flung and remote areas. The Tamil Nadu Act 45 of 1994 was enacted seeking such relaxation to reserve 69% of the seats in educational institutions and vacancies in public employment for Backward Classes, Most Backward Classes, Scheduled Castes and Scheduled Tribes. The said Act is under challenge before the Supreme Court and is pending adjudication.

8. Tamil Nadu Act 45 of 1994 deals with class reservation on the basis of backwardness. The reservations therein are vertical. So far class reservation is concerned, INDIRA SAWHNEY's case (supra) held that reservation is vertical. But coming to gender reservation, it is not vertical but horizontal and has to be reserved according to the percentage specified in each of the classes i.e. Other Communities, Backward Communities, Most Backward Communities, Scheduled Castes and Scheduled Tribes. Likewise, 3% reservation for Physically Handicapped should also be horizontal and not vertical. 3% reservation in Tamil Nadu Medical Education works out to 37 seats out of 1,255 seats. These 37 seats have to spread horizontally into the above categories viz., Other Communities, Backward Communities, Most Backward Communities, Scheduled Castes and Scheduled Tribes. As such, there is no conflict in between the Disabilities Act and Tamil Nadu Act 45 of 1994 and even if such conflicts occur, then the Disabilities Act being a later one and traceable to Entry 25 List III of Schedule 7 of Indian Constitution, would prevail over any repugnant provisions in Tamil Nadu Act 45 of 1994.

9. Section 39 of the Disabilities Act reads as follows: "39. All educational institutions to reserve seats for persons with disabilities.- All Government educational institutions and other educational institutions receiving aid from the Government, shall reserve not less than three per cent seats for persons with disabilities."

A bare reading of the above Section itself would not leave any doubt that it is mandatory and not directory. Further, the very object and intendment in

enacting Disabilities Act is to provide equal opportunities to the disabled and a reading of the decision JAVED ABIDI v. UNION OF INDIA (1999) 1 S.C.C. 467) makes it clear that the said provision is mandatory and not directory. It is apt to extract the emphasis laid by the Supreme Court, which is in following terms:

".....It may be borne in mind that the Economic and Social Commission for Asian and Pacific Region held a meeting at Beijing from 1-12-1992 to 5-12-1992 and adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Region and India is a signatory to the said Proclamation. The Act in question was passed by Parliament which intends to provide for the following as is apparent from the Statements of Objects and Reasons:

'(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;

(ii) to create barrier-free environment for persons with disabilities;

(iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-`-vis, non-disabled persons;

(iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;

(v) to lay down strategies for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities; and

(vi) to make special provision for the integration of persons with disabilities into the social mainstream.'

The Committees constituted by the Central Government as well as by the respective State Governments must, therefore, make an earnest endeavour to achieve the objectives, as indicated above, in exercise of their powers conferred under the Act."

It is now clinching that the above beneficial provision is mandatory and not directory.

10. The writ petition was filed in the month of September 2002 seeking admission under the reserved quota for Physically Handicapped and pending adjudication, a direction was sought for to reserve a seat. The petition was allowed by the learned single Judge in the month of December,

2002. There has been no stay of the operation of the said judgment. In the circumstances, we cannot accede to the contention of the learned Government Pleader that the writ petition is hit by laches.

11. In the above circumstances, we fully concur with the judgment

rendered by the learned single Judge Mr. Justice E. Padmanabhan and accordingly, dismiss this Writ Appeal. Consequently, W.A.M.P. No.783 of 2003 is closed.

12. In order to see that the benefits of the Disabilities Act reach to all the disabled covered by the said Act, a copy of this judgment be communicated to the Chief Secretary, Government of Tamil Nadu, with a direction to issue necessary instructions to the concerned authorities to follow the rule of reservation of 3% to the disabled in all the Governmental educational institutions and also the educational institutions running with the aid from the Government.

(B.S.R., CJ) (D.M., J)
bh/

LR Entry:Yes
Internet:Yes

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